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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/665,608	09/20/2000	Deanna Thurman Ongwela		8516

7590 06/25/2003

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EXAMINER

YU, JUSTINE ROMANG

ART UNIT	PAPER NUMBER
3764	

DATE MAILED: 06/25/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/665,608	ONGWELA, DEANNA THURMAN
Examiner	Art Unit
Justine R Yu	3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 19 February 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-3, 5, 6 and 11 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-3, 5, 6, and 11 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____.

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) Other: _____.

DETAILED ACTION

1. This office action is responsive to the amendment filed on 2/19/03. As directed by the amendment, claims 1-3, 5, and 6 were amended, and claim 8 was cancelled. Furthermore, applicant improperly amended a cancelled claim 9 (see amendment filed on 8/29/02). Claim 9, however, has been renumbered as claim 11. Thus, claims 1-3, 5, 6, and 11 are presently pending in this application.

Claim Objections

2. Claim 5 is objected to because of the following informalities: line 1 “first and second effective working area” should read as --first and second effective working areas--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. Claims 5 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 5, line 2; “said upward projection” is unclear as to whether the upward projection in the first or the second effective working area is being referred. In line 2, “secured thereto” is misdescribed and lacks antecedent basis because the glove forms the working areas, nowhere in the previous claim has suggested that the working areas are secured to the glove. In line 3, “exclusively” is confusing as whether or not the applicant attempts to redefine the location of the working areas.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3, 5, 6, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamada (JP 11-114,010) in view of McClurken (2,298,959), and Lohati et al (4,577,625), collectively.

Hamada teaches a massaging glove 1 having front finger portions (first effective working areas), back finger portions (second effective working areas), and a palm portion (third working area), the front finger portions and the palm portion each having a plurality of protrusions (2-8). The protrusions in the palm portion are interpreted as the friction areas attached to the third effective working area. Notes that the feature of choosing resilient glove is necessary and well known in the art.

Hamada lacks a detail description of the means for joining two pieces of materials to form fingers. However, McClurken in figures 1-3 shows that a glove including finger portions being formed of two pieces materials. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to fabricate Hamada's glove from two pieces material as taught by McClurken, since such feature of forming the finger portions with two pieces material is notoriously old and well known in the art.

Hamada teaches integrally formed massaging elements or protrusions but lacks protrusions being separated joint to the glove with adhesion. However, Lohati teaches massaging elements 13 being adhesively jointed to the glove 12 (column 3, lines 46-51). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hamada's integrally formed protrusions with protrusions being adhesively joint to the glove as taught by Lohati, since the adhesive is well known for joining two elements together and it appears that the modified Hamada's glove would perform equally well with protrusions being adhesively jointed to the glove.

Hamada further lacks protrusions located on the back portions of the fingers (or phalanges region). However, Lohati in figure 20 teaches massaging elements could be located at both front and backsides of the massaging device 50, including the pad of digits and phalanges regions. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Hamada's glove with massaging elements located on the back side of the finger portions (phalanges regions) as taught by Lohati, so that the user could selectively using his front or back portion of his hand to perform the massaging action.

Regarding the size of the protrusions: notes that the feature of choosing a particular sized protrusion, i.e., at least 0.14 inches or 3.5 mm is considered as an obvious design choice within the skill of the art. See In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955). It addition, it is inherent upon figures 2 and 3 of Hamada that the actual height of the projections for an adult could be at least 3.5mm in height.

Regarding claim 2, the feature of choosing a particular material for the glove, i.e., Lycra is considered as an obvious design choice since such materials are well known in the glove art.

Regarding claim 3, the feature of joining two pieces of materials together by sewing is old and well known in the glove art.

Regarding claim 11, figure 2 of Hamada shows a plurality of single, individual protrusions located on the pad of digits. The combined Hamada and Lohati reference has the single individual protrusions located on each of the pad of digits and the phalanges region.

Response to Arguments

6. Applicant's arguments filed 2/19/02 have been fully considered but they are not persuasive.

The applicant in her remarks first objects to the Lohati reference and states that Lohati has rotating balls and interlocking beads. The rotating balls and interlocking beads are not particular relevant here, however, in that Lohati's reference is only relied upon its teaching that massaging elements could be placed on the phalanges region and the massaging elements could be adhesively jointed to the glove. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Next, the applicant on page 3, the first full paragraph of the remarks argues that Hamada would not be appropriate for friction or tapping massage strokes. The argument is not well taken because Hamada in column 2, (section 0007) clearly teaches that "a hand is put in into the glove (1) which prepared the projection (8) in the side of a palm, and acupressure, massage, and shoulder-tapping are carried out at the time of acupressure and a massage, When tapping

the shoulder, a fist is grasped lightly and it pounds on a shoulder lightly using the projection (8) prepared in the side of a palm.” In addition, figures 2 and 3 of Hamada clearly show the protrusions being used to massage and tapping a body part, respectively. Thus, Hamada’s device would be able to perform the recited function.

On page 4, the first full paragraph of the remarks, the applicant argues that the present invention does not include protrusions in the palm portion. However, whether or not including protrusions in the palm portion is irrelevant because the claim languages do not support it.

On page 5 of the remarks, the applicant argues that the size (3.5 mm in height) of the projections is not an obvious design choice, and states that “in no way possible are the protrusions in Hamada equipped for massage and tactile stimulation of the deeper tissues, by its own state advantage”. It appears that the applicant ignores the usage of the Hamada’s glove as to be used in finger pressure therapy and shoulder massage therapy as stated in the title of Hamada’s invention. Hamada clearly shows the glove being used for massaging and tactile stimulation. Although Hamada lacks a detail description that the height of the projections being at least 3.5mm, however, as shown in a reduced scale in figure 3 of Hamada, the measurement of the projections (8 and 2) in figure 3 is approximately equal to 1mm in height. Since a regular sized glove for an adult should be at least 3.5 times larger than the glove shown in the drawing, it is inherent that Hamada’s glove has projections at least equal to 3.5mm in height. In addition, the feature of having such particular height is notoriously old and well known in the massage art, see figure 3 of Lohati and figure 2 of Isamura references.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schulkin et al (5,500,956) is cited to projections being attached to a glove by

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justine R Yu whose telephone number is (703)308-2675. The examiner can normally be reached on 8:30am - 6:00Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703)308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.



Justine R Yu
Primary Examiner
Art Unit 3764

JY
June 16, 2003